

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST  
FOR REVIEW BY:

**ROBEN B. HALL**

Petitioner.

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CHARGE NO.: 2009CF1981  
EEOC NO.: 21BA90769  
ALS NO.: 10-0243

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Roben B. Hall's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CF1981; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following:

1. On November 17, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent, which she subsequently perfected on January 9, 2009. The Petitioner alleged that Wal-Mart Stores, Inc. ("Employer") failed to promote her because of her physical disabilities, Traumatic Head Injury and Reflex Sympothetic Dystrophy (Counts A and B), and her sexual orientation, homosexual (Count C) in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On March 16, 2010, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. On April 5, 2010, the Petitioner filed a timely Request. On May 12, 2010, the Petitioner filed a Reply to the Respondent's Response.
2. The Employer's employees may apply for open positions within the Employer by using an on-line computerized Career Preference System ("System").
3. In early May 2008, the Petitioner used the System to apply for a promotion from her position of Overnight Stocker to the position of Vision Center Manager at the Employer's Elk Grove, Illinois store.
4. On June 7, 2008, the Employer selected a different applicant for the position of Cosmetics Department Manager.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

5. The Employer stated that the selected applicant was chosen because she had already been serving as a Vision Center Manager in the Employer's Gurnee, Illinois store. During the Respondent's investigation, the Employer submitted evidence which demonstrated that the selected applicant had also worked in various managerial positions with the Employer prior to June 2008.
6. In her charge, the Petitioner contends the Employer selected a less qualified non-disabled, non-homosexual applicant for promotion to Vision Center Manager.
7. In her Request, the Petitioner argues that the Employer did not provide any evidence that the non-disabled, non-homosexual applicant was better qualified than the Petitioner. The Petitioner also argues that there were discrepancies in the Respondent's investigation and that the Respondent's investigation file was incomplete.
8. In its Response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues that the Employer articulated a non-discriminatory business reason for not promoting the Petitioner and there was no evidence this articulated reason was a mere pretext for unlawful discrimination.
9. In her Reply, the Petitioner raises a new claim of retaliation which she did not allege in her original charge. The Petitioner now contends the Respondent made credibility determinations and disregarded the Petitioner's evidence.

## **CONCLUSION**

The Commission concludes the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

The Commission finds the evidence is insufficient to prove the existence of a *prima facie* case of discrimination. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that she is a member of a protected class; (2) that she was performing her work satisfactorily; (3) that she was subject to an adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2<sup>nd</sup> Dist. 1994).

In the Petitioner's case, there is no substantial evidence the Petitioner was similarly situated to the selected applicant. The selected applicant was already a manager at the time the Employer chose her to work as a manager in its Elk Grove location. The Petitioner was an Overnight Stocker, a non-managerial position.

Further, as to the new claim of retaliation raised by the Petitioner for the first time in her Request, on a request for review, the Commission does not have jurisdiction to review new allegations or charges of discrimination raised for the first time in a request for review. See 775 ILCS 5/ 8-103.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Wal-Mart Stores, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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**Entered this 12<sup>th</sup> day of January 2011.**

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box